

Local Union No. 441, International Brotherhood of Electrical Workers, AFL-CIO (Bear State Electric Co., Inc.) and John Van Steinburg.
Case 21-CB-8407

30 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 31 October 1983 Administrative Law Judge Russell L. Stevens issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified.¹

CONCLUSIONS OF LAW

By requesting an employee referred out of the Respondent's hiring hall to quit his job because he was not a member of the Respondent; by threatening to deny membership to an employee for refusing to quit his job in order to make room for members of the Respondent who were laid off; and by threatening to deny membership to an employee because he testified adversely to one of its members at a grievance hearing, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Local Union No. 441, International Brotherhood of Electrical Workers, AFL-CIO, Los Angeles, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Requesting employees referred out of its hiring hall to quit their jobs because they are not union members.

¹ We agree with the General Counsel that the judge's Conclusions of Law and recommended Order fail to reflect fully his findings that the Respondent violated Sec. 8(b)(1)(A) of the Act by requesting Steinburg to quit his job with Bear State Electric Co. in order to provide jobs for its members, and by threatening to exclude him from membership if he refused to comply. Additionally, the judge inadvertently failed to include in his recommended Order a provision requiring the Respondent to cease and desist from restraining or coercing employees in the exercise of their Sec. 7 rights in any "like or related manner." Accordingly, we shall issue new Conclusions of Law, and an Order and a notice to employees and members to correct these omissions.

(b) Threatening to deny membership to employees for refusing to quit their jobs in order to make room for its members who are laid off.

(c) Threatening to deny membership to employees for testifying adversely to its members at grievance hearings.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its meeting hall, office, and hiring hall, in Los Angeles, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notices for posting by Bear State Electric Co., if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request employees referred out of our hiring hall to quit their jobs because they are not union members.

WE WILL NOT threaten to deny membership to employees for refusing to quit their jobs in order to make room for our members who were laid off. threaten to deny membership to employees for

testifying adversely to our members at grievance hearings.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LOCAL UNION NO. 441, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge. This case was tried in Los Angeles, California, on September 15, 1983.¹ The complaint, issued, June 16, is based on a charge filed May 2 by John Van Steinburg (Steinburg), and a first amended charge filed by Steinburg on May 13. The complaint alleges that Local Union No. 441, International Brotherhood of Electrical Workers, AFL-CIO (Respondent or Union), violated Section 8(b)(1)(A) of the National Labor Relations Act.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. A brief, which has been carefully considered, was filed on behalf of the General Counsel.

On the entire record, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein Kaiser Foundation Health Plan, Inc. (Kaiser), a California nonprofit organization, a health care institution, has been a health plan engaged in providing prepaid health care services to its members. In the normal course and conduct of its business operations in the health care industry, Kaiser annually receives gross revenues in excess of \$250,000 and annually purchases and receives goods and products valued in excess of \$5,000 directly from suppliers located outside the State of California.

At all times material herein Bear State Electric Co. (Bear State Electric), a California corporation, has been engaged as an electrical contractor in the building and construction industry, and has maintained a principal office located in Los Angeles, California. In the normal course and conduct of its business operations, Bear State annually performs services valued in excess of \$50,000 for Kaiser.

I find that Bear State Electric is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 441, International Brotherhood of Electrical Workers, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background²

At times relevant herein Kaiser had, under construction, facilities at its Canyon General Hospital. Kaiser was its own general contractor, and employed as a subcontractor, among others, Bear State Electric. James Hammond was employed by Kaiser, and supervised remodeling and construction jobs at Canyon General, including the job involved in this controversy.

Bear State Electric is a member of Orange County Chapter, National Electrical Contractors Association, Inc. (NECA), which at times relevant herein had a collective-bargaining agreement with Respondent Union. That agreement provided, inter alia, that Respondent would be the exclusive referral agent for employees employed by NECA members at jobsites.

The Union has an executive board of five members, who are required by the International's (IBEW) constitution to "meet between regular meetings of the L.U. [Local Union]" and who are authorized "to take any action that the L.U. can take and which should be taken prior to the next regular meeting of the L.U." Under the bylaws of Respondent Union, the executive board has the duty "to investigate all applications for membership and submit its report to the local union" for further action. The executive board hears all charges against, and tries, all members of the local union, and investigates and passes on, and makes recommendations to the membership concerning, applications of travelers to become members of Respondent.

John Van Steinburg, who has been a journeyman electrician since 1968 and who is the Charging Party herein, has been a member since 1968 of IBEW Local 58 in Michigan. Steinburg moved to Orange County in Southern California, which is within Respondent's geographical boundaries, in 1978 and there purchased a home and became a resident. Steinburg worked out of Respondent's hiring hall, and on two occasions attempted through Respondent's executive board, in 1979 or 1980 and in 1982, to transfer his traveler's card from Local 58 to a membership card in Respondent's local. On both occasions Ed Hanson, Respondent's business manager, with whom Steinburg dealt, told Steinburg that his transfer request would have to be considered by the executive board. After his second request was filed, Steinburg met with the executive board, who asked him several questions about his past and present places of residence. He was told that his application would have to be considered and voted on by Respondent's membership. Steinburg attended the next general membership meeting, in March 1982, and among other actions the executive

¹ All dates hereinafter are within 1983, unless otherwise stated.

² This background summary is based on credited testimony and evidence not in dispute.

board reported that it had denied the application of several persons, including Steinburg, for membership in Respondent Local.³ Steinburg has not attempted since that meeting to become a member of Respondent.

Steve Christensen, a member of the Union's executive board, commenced work on the Kaiser project in February 1979 as the first journeyman electrician dispatched by the Union for that project. He acted as foreman when first employed, and was responsible directly to the owner of Bear State Electric. Approximately 1 year later, Ed McPeak was dispatched to the Kaiser project as general foreman, and Christensen was demoted from foreman to journeyman, with a reduction in pay. Thereafter, when McPeak was off the worksite or on vacation, Christensen acted as foreman in McPeak's absence. In addition to being a member of the Union's executive board, Christensen acted somewhat as a job steward on the Kaiser project, and handled all union matters that arose. When there were doubts as to whether or not employees or subcontractors on the site were there with union approval, Christensen personally checked their credentials, or instructed union member-employees to do so. On one occasion, approximately on January 12, 1983, Christensen instructed Steinburg and other employees to check union credentials of employees who came onto the worksite for a subcontractor other than Bear Electric. After Christensen checked union credentials, he reported infractions to McPeak, and those persons not holding union credentials were removed from the project.

Steinburg started working at the Kaiser project November 17, 1982, on referral from the Union off book 1, which was the union referral book of highest priority.⁴ Prior to that date he had been unemployed approximately 6 months, during which time he had served some time as a picket for the Union on a project not related to this controversy.

After Steinburg was hired, two other electricians were dispatched by the Union to the Kaiser project, to work as journeymen electricians. They were Joe DeRobbio and Bradley Lincoln.

On January 12, 1983, McPeak laid off DeRobbio and Lincoln because of lack of work.⁵ Steinburg was retained on the job. Events relating to this matter are in dispute, as discussed *infra*.

Christensen was discharged January 14, 1983, and filed a grievance under the union contract based on his contention that he had been laid off in violation of the contract. Sometime in February, the dispute was taken to the labor management committee established by the collective-bargaining agreement. In attendance were Carl Wedemeyer (an assistant business manager for Respondent), Steinburg,⁶ Hank Brachmueller (owner of Bear Electric), McPeak, Christensen, Hanson, Jim Burkey (Respondent's recording secretary), and some others. This meeting is discussed *infra*.

³ This sentence is based on Steinburg's credited statement.

⁴ Book 2 is the referral book for travelers.

⁵ This date was not firmly established at trial, but it was on January 12 or 13. The former is accepted as accurate. Whether or not it was on either date does not affect any finding or conclusion.

⁶ Steinburg attended at Christensen's request.

The General Counsel contends that certain statements made by Wedemeyer and Christensen to Steinburg during events summarized above were in violation of the Act. Respondent denies the allegations of the complaint.

B. Agency Status of Wedemeyer and Christensen

Wedemeyer's union agency status at all times material herein is admitted by Respondent, and is not in dispute.

Respondent admits that Christensen was a member of the Union's executive board at all times material herein, but denies his alleged agency status. That denial does not have the support of the record. As noted above, the executive board acts for and in behalf of Respondent's membership between membership meetings, tries union members for alleged violations of Respondent's rules, investigates applicants for membership, and generally is vested with agency authority to act for Respondent. In addition, Christensen acted much as a union steward at the Kaiser worksite, and conducted all union affairs at the site, including investigation of union credentials of employees and subcontractors. Wedemeyer told Steinburg on one occasion, discussed below, to ask Christensen's advice concerning a union matter at the site. Respondent contends that the executive board did not have final authority to act on travelers' applications for membership, but Steinburg credibly testified that, in fact, it did act finally by denying his request for membership. In any event, even assuming *arguendo* that it could not act finally, the executive board had agent authority to investigate and make recommendations to the membership concerning applications. It is found that Christensen was an agent of Respondent at all times relevant to this controversy.⁷

C. Telephone Conversation of January 12, 1983

Steinburg testified that Wedemeyer, who had never before called him on the telephone at the jobsite, called him on January 12, 1983, relative to the layoff of DeRobbio and Lincoln.⁸

Like I said, Carl called me on the phone, and he said to me that "John, I want you to be aware that two local men are being laid off today. As you know, travelers go first. So I want you to be aware of the situation."

And then I said, "Well, thank you for calling me and letting me know, but that yes, you may consider me a traveler. But although I am living here and intend to stay here, and I have been here for so long, as you know I have had six months off last year, and my savings account has dwindled down to where if I left how I would probably lose my house." And that I had come out on Book I and need this job to survive.

And he said, "Well, why don't you see Steve Christensen. He is on the job. Ask him for advice."

⁷ *Electrical Workers IBEW Local 453 (National Electrical Contractors)*, 258 NLRB 1427 (1981).

⁸ Steinburg later explained that he called Wedemeyer, in response to a message that Wedemeyer had called him earlier, asking to talk with Steinburg.

Q. Is that as much conversation as you had?

A. Yes. He let me know the two local men were being laid off and the travelers should go first and that I may have a problem. Although I don't know the exact language that he said, but the sense was that I could have a problem getting my card in the local if I didn't respond to request.

Q. Okay, he didn't say that?

A. He didn't say that.

Q. I am just asking you if you recall the conversation.

A. That is as much of the exact language that I can remember.

Wedemeyer acknowledged talking on the telephone with Steinburg, but denied that he called Steinburg. He said he was called by Steinburg:

Basically he was inquiring about the situation with the layoff, and that he felt bad that that happened that way, but that he had been out of work, and that he felt that he had put his—tried to apply twice, and that he felt that he was a local member even though in name he wasn't. That was basically it.

Wedemeyer said he referred Steinburg to Christensen, because the latter was the senior employee on the job, and also Christensen was a member of the executive board. Wedemeyer also testified that, prior to the telephone call from Steinburg, Lincoln called him to complain about being laid off when a traveler was kept on the job, and that Steinburg said he would send a business agent to the worksite. He said he later sent a business representative, Roy Huntington, to the site to calm the job down.

D. Conversation Between Steinburg and Christensen

Steinburg testified that his telephone conversation with Wedemeyer was held when he was in the construction site trailer and that, just as he hung up the telephone, Christensen walked into the trailer. McPeak, Hammond, and one other person were in the trailer. Steinburg testified that he related to Christensen his telephone conversation with Wedemeyer, and explained to Christensen his belief that, although technically he was a traveler, his home was in Orange County and he had been working from the Union's book 1. Steinburg testified:

I told Steve, I said, "I just got off the phone with Carl and he wanted me to know that there is two men that were leaving the job, and he wanted me to ask you for advice."

And he said, "Well, you are a traveler in this local, right?"

And I said, "Well, technically, yes, I am a traveler. My ticket has not yet been accepted in the local."

And he says, "Well, you know travelers go first.

After Steinburg explained his position:

And he says, "Well, this doesn't change anything. You are still technically a traveler. And you better make room for a local man." So then it was brought up that I would have to quit the job because the contractor was not going to lay me off, because they wanted me on the job. They had trained me for a certain room that I was working in there, and I had a lot of information about the particular room. And the contractor didn't feel that it was fair to the customer to lay me off and have to retrain somebody else for that particular room that I was working in. It was an x-ray room and kind of involved.

So the contractor, therefore, would not lay me off.

McPeak then noted the problems involved in laying off Steinburg, after which:

And Steven at the time said, "I understand all of that. But it doesn't really make any difference. You still, if you want to get your card in this local, you are going to leave the job." He said, "So you better think about it."

I thought about it, and I restated my position that I am not really a traveler in my own mind.

After Steinburg further explained his position:

And he says, "John, I am going to tell you right now that if you don't leave this job, you will never get your ticket in Local 441."

I says, "Well, Steve, I am sorry, but I have other obligations that are more important to me than getting my ticket in that local. And they are feeding my family."

So he made a reference to these guys that come in from out of state and have high house payments—"That is the only reason you are not leaving, is because you have got these high house payments."

I said, "That really has nothing to do with it. I am here because this is my job, and I am not going to leave it for somebody else to take it—voluntarily."

So at that point he stormed out of the trailer.

On cross-examination, Steinburg testified that, during the conversation in the trailer, Christensen stated to him, "Well, technically you are still a traveler. Unless you leave this job, you will never get your card in Local 441. As long as I am on the E-Board you will never get your card in Local 441."

Hammond testified that he overheard the conversation between Steinburg and Christensen, and generally corroborated Steinburg. Soon after the conversation, Hammond stated, he told McPeak that he wanted Christensen off the job.

McPeak also testified that he overheard the conversation between Steinburg and Christensen, and he too generally corroborated Steinburg.

Christensen testified that, just after he went into the construction trailer on January 12, Steinburg stated to

him, "I just called Carl Wedemeyer to find out about his traveler thing." Christensen then testified:

I told him what had been the practice in Orange County. And I said that if his ticket were to come into the E-Board that I as an individual would have to vote against it, that I didn't happen to agree with what he did. But I understood his situation with that expensive house he had bought. And I appreciated that. But I had an obligation to the local members, I felt, to vote against his ticket.

Christensen denied that he told Steinburg that the latter never would get a ticket in the local because he refused to leave the job as a traveler, but acknowledged he told Steinburg that one of the problems of the local was "people tend to live beyond their means," referring to Steinburg's purchase of an expensive house. Christensen testified he told Steinburg that he, personally, would vote against Steinburg's membership application, but that he did not, and legally could not, speak for the executive board. Christensen denied threatening Steinburg, or asking him to quit his job.

E. Christensen's Discharge

McPeak discharged Christensen approximately January 14, 1983, and a grievance hearing was held in February, as noted above. Steinburg's testimony primarily involved his participation in checking union credentials of persons working the Kaiser project pursuant to Christensen's instructions, and his conversation with Christensen in the trailer the day DeRobbio and Lincoln were laid off. Steinburg testified that, a few days after the hearing, he called Wedemeyer on the telephone and asked how the hearing went, to which Wedemeyer replied, "It didn't go well at all for Steve. And you sure didn't make any friends with him. And you can be sure you will never get your card in Local 441."

Wedemeyer acknowledged talking on the telephone with Steinburg, but denied telling Steinburg that he never would get a card in the Union, and denied telling Steinburg that the latter did not make a friend of Christensen.

Discussion

The fact that Respondent has, and for a long period of time in the past has had, a standing practice of giving its members job preference over travelers is not in dispute. That fact was explained, credibly and in detail, by Steinburg, who testified that, in the past, he has been required by Respondent to quit jobs in deference to Respondent's members; by McPeak, who testified that he had personal knowledge of such job preference having been given by Respondent, and who testified that he overheard Christensen threaten to "shut down" the Kaiser job because Steinburg was retained over DeRobbio and Lincoln; and by Christensen, who described the practice at length. The fact that the International constitution and Respondent's bylaws prohibit preferences is irrelevant; the fact that preferences routinely are given by Respondent is relevant.

So far as testimony concerning allegations of the complaint are concerned, the accounts related by Steinburg, McPeak, and Hammond are credited. Their testimony was convincing, and is consistent with Respondent's admitted preference of regular members over travelers.

The statements of Wedemeyer made to Steinburg on the telephone on January 12, 1983, the statements of Christensen made to Steinburg on January 12, 1983, and the statements of Wedemeyer made on the telephone to Steinburg in February 1983, all of which are discussed above, were threats to Steinburg, intended to cause him to quit his job in favor of DeRobbio and Lincoln. Those threats clearly were coercive.

The authority of the threats was that of the Union, acting through its agents, Wedemeyer and Christensen.

The law applicable to this controversy was enunciated in *Sachs Electric Co.*,⁹ wherein the Board stated:

The operation of a union hiring hall imposes considerable responsibilities on the union agents in charge of the hall. Thus, they must either foster nor countenance discrimination with regard to access to, or referral from, the hall on the basis of International union membership, local union membership, or any other arbitrary, invidious, or irrelevant considerations. E.g., *Pattern Makers' Assn. of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO (Michigan Pattern Manufacturers)*, 233 NLRB 430 (1977); *Building Material, Truck Drivers, Chauffeurs, and Helpers, Local No. 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Explo, Inc.)*, 229 NLRB 347 (1977); *Ashley, Hickham-Uhr Co.*, 210 NLRB 32 (1974); *Pacific Maritime Assn.*, 209 NLRB 519 (1974). Similarly, a union violates the Act if it coerces employees previously referred out of its hiring hall into quitting their jobs based on such impermissible considerations. See *International Brotherhood of Electrical Workers IBEW, Local 309, AFL-CIO-CLC (R. Dron Electrical Co.)*, 212 NLRB 409 (1974); see also *Lummus Company v. NLRB*, 339 F.2d 728, 734 (D.C. Cir. 1964).

Here, the coercive nature of Danner's and Hensley's requests that travelers quit is manifest. We have found previously that IBEW locals commonly "request" travelers to quit so that unemployed local members can take their places. *R. Dron Electrical Co.*, *supra* at 414. These "requests" occasionally have been enforced by threats of violence and even actual violence. *Id.* Additionally, travelers asked to quit under circumstances such as those present in the instant case undoubtedly are aware that the "requests" come from union officials who, by virtue of their responsibilities in administering the hiring hall, control, and will continue to control, the travelers' livelihoods within the hiring hall's jurisdiction. Thus, it should not come as a surprise if these "requests" are construed by traveler employees as more than mere solicitations for "volunteers."

⁹ *Sachs Electric Co.*, 248 NLRB 669, 670 (1980).

In addition to the matters discussed above, Wedemeyer's statements to Steinburg in February constituted a threat that the latter would not obtain a membership card with Respondent, because of Steinburg's testimony at Christensen's grievance hearing. Such a threat is in violation of the Act, on a basis independently of the threat to cause Steinburg to quit his job.¹⁰

CONCLUSIONS OF LAW

1. By coercively threatening an employee and attempting to deprive that employee of employment, and coercively threatening an employee with exclusion from regular status as a union member because the employee had

¹⁰ *Teamsters Local 557 (Liberty Transfer)*, 218 NLRB 1117 (1975); *Teamsters Local 788 (Marston Ball)*, 190 NLRB 24 (1971).

testified in a labor management hearing adversely to a union member, Respondent violated Section 8(b)(1)(A) of the Act.

2. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union violated Section 8(b)(1)(A) of the Act, I shall recommend an order requiring Respondent to cease and desist therefrom, to post notices at its meeting halls, and to supply notices for posting by Bear State Electric Co., Inc., if that company is willing to do so.

[Recommended Order omitted from publication.]